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13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 WESTERN DIVISION

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 vs.

19 ONE WHITE CRYSTAL-COVERED
20 "BAD TOUR" GLOVE AND OTHER
21 MICHAEL JACKSON
22 MEMORABILIA; REAL PROPERTY
23 LOCATED ON SWEETWATER
24 MESA ROAD IN MALIBU,
25 CALIFORNIA; ONE 2011 FERRARI
26 599 GTO,

27 Defendants.

CASE NO. 2:11-03582-GW-SS

Hon. George H. Wu

CLAIMANTS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT ON THE LIMITED
ISSUE OF PROBABLE CAUSE; OR,
IN THE ALTERNATIVE, ORDER
FINDING THE GOVERNMENT
LACKED PROBABLE CAUSE AT
THE TIME IT INSTITUTED THE
ACTION FOR FORFEITURE *IN REM*;

[Consolidated Separate Statement,
Evidentiary Objections, and
Supplemental Declaration of Brian M.
Wheeler filed concurrently herewith]

Hearing Date: June 20, 2013

Time: 8:30 a.m.

Place: Courtroom No. 10

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Preliminary Statement**

3 The government argues that the straightforward issue of whether it had
4 probable cause to *institute* the forfeiture proceedings is determined at the time it
5 filed the Second Amended Complaint (the “SAC”), rather than when it in fact
6 instituted the forfeiture action. The government’s argument contradicts its previous
7 admission and this Court’s prior ruling.

8 When Claimants moved to dismiss the SAC, this Court ruled that the
9 government must have probable cause “at the time it filed the initial complaint,” and
10 that “after-acquired evidence may not be used” to support “probable cause to
11 institute the action.” See ECF Doc. No. 68-1 at 12. The government conceded that
12 the Court’s analysis was correct, but argued that the question of probable cause
13 should be decided on summary judgment, not by a motion to dismiss:

14 **THE COURT:** If at some point in time in the future it’s determined
15 conclusively that they did not have that evidence at the time the matter
16 was initially filed, then I think they will concede that deficiency might
tank some or all of their case.

17 . . . Does the government disagree that if it did not have the evidence at
18 the time that the forfeiture matter was filed, that they cannot argue it
later on?

19 **MR. LEE:** No, Your Honor. *There’s no dispute as to the 1615*
20 *probable cause requirement.* But the case Mr. Lyons has cited is a
21 motion for summary judgment, which is exactly what Your Honor
22 pointed out in the tentative. This should be raised -- in that case it was
raised at the close of discovery by claimant on a motion for summary
judgment. The claimants are free to do that, Your Honor. It’s not a
pleading stage issue. We’re in agreement with the Court.
Sept. 6, 2012, Hr’g Tr. at 6:10-13, 7:3-13 (emphasis added).

23 Having succeeded in convincing the Court to deny Claimant’s Motion to
24 Dismiss the SAC on the ground that the probable cause issue should be left for
25 summary judgment, the government now argues that that summary judgment motion
26 is inappropriate because the government had already amended its complaint. The
27 government’s attempted “Catch-22” is pure gamesmanship.

1 The government's insistence that probable cause is measured on the filing
 2 date of the SAC is little more than a transparent attempt to conceal the absence of
 3 reliable evidence in the government's possession when it instituted this action.
 4 Instead, it needed 13 additional months to gather evidence it believed was sufficient
 5 to establish probable cause. This is impermissible.

6 When this Court denied Claimant's Motion to Dismiss the SAC, the Court
 7 permitted Claimant to conduct discovery in order to identify the evidence the
 8 government relied on "when it filed the action":

9 **THE COURT:** It may be that the quickest thing to happen would be
 10 for your client to ask the government certain interrogatories, or a
 11 30(b)(6) or whatever, to get the information as to what the government
 12 is relying on, *what is the evidence that it relied upon when it filed the*
 13 *action.* The government will give you a response; and whatever it is,
 14 you can decide whether or not that is sufficient or insufficient. If it is
 15 insufficient in your opinion, you can make the motion [Re: Probable
 16 Cause].
 17 Sept. 6, 2012, Hr'g Tr. at 29:10-18 (emphasis added).

18 After receiving the government's discovery responses, Claimant announced
 19 that he would make the instant motion. The Court then stated:

20 **THE COURT:** And what I will require from the government in its
 21 opposition is as to each of the items that the government seeks to
 22 forfeit, I want you to list for me the bases of the probable cause. In
 23 other words, almost like a statement of undisputed facts so that we have
 24 a document which will make it clear as to what are the grounds for the
 25 government's belief that the item was forfeitable.
 26 Jan. 28, 2013, Hr'g Tr. at 22:13-20.

27 Instead of filing a straightforward separate statement that identified the
 28 specific evidence it possessed when it commenced this action, the government filed
 a 107-page separate statement, which primarily relies on evidence that the
 government acquired **after** it initiated this action. Other facts relate to new legal
 theories that were not pleaded in the original complaint and thus not relied on by the
 government as a basis for forfeiture at the time the government commenced this
 action.

The few "facts" that the government identifies it was aware of before it
 initiated this action are simply general rumors of unspecified corruption juxtaposed

1 with details of Claimant's spending habits that do not establish probable cause that
2 the defendant assets were acquired with SUA proceeds.

3 Finally, the government does not identify the basis for probable cause as to
4 *each* defendant asset the government seeks to forfeit, as this Court specifically
5 directed the government to do. The Court should not condone flagrant disregard of
6 its rulings. Because the government has not shown that it had probable cause for
7 forfeiture of the specific defendant assets named when it instituted the proceeding
8 against *those* assets, the Court should grant the instant motion and end this
9 unprecedented and ill-conceived action.

10 Argument

11 **I. PROBABLE CAUSE TO INSTITUTE FORFEITURE PROCEEDINGS** 12 **IS DETERMINED AS OF THE DATE THE GOVERNMENT** 13 **INSTITUTED THE ACTION**

14 In its first 18 pages, the government sets forth an argument that the Ninth
15 Circuit has already rejected as a "tortured construction" of 19 U.S.C. § 1615 – i.e.,
16 the government's dead-on-arrival argument that probable cause is measured by a
17 date other than when it *instituted* the forfeiture action. United States v.
18 \$191,910.00 in U.S. Currency, 16 F.3d 1051, 1066 (9th Cir. 1994) (holding the
19 government must have probable cause "at the time it institutes forfeiture
20 proceedings."). The strained definition of the verb "institute" the government
21 urges the Court to adopt not only runs afoul of the plain meaning of the word, it
22 also flies in the face of the unambiguous language of the statute and, most
23 importantly, is contrary to Ninth Circuit law and this Court's prior ruling. Indeed,
24 the government's "argument would make the words 'institution of such' in the
25 statute meaningless." Id. Like the statutory language in Section 1615, there is
26 nothing ambiguous about the Ninth Circuit's rule:

27 The plain language of the statute makes clear that the government must
28 have probable cause at the time it institutes the forfeiture proceedings.
There is nothing ambiguous about the provision at all. The statute is not

1 cast in abstract or general terms. It requires probable cause “for *the*
 2 institution” of “*such* suit or action.” Moreover, the statute does not say
 3 that the government must have probable cause for the maintenance of
 4 the action, or probable cause for the continuation of the action, or even
 5 probable cause for the re-institution of the action. Even more critical,
 6 the statute does not simply say that the government must have
 7 “probable cause for its action.” It says the government must have
 8 probable cause for the *institution* of *such* action. The clear import of
 9 this language is that the government must show that it had probable
 10 cause to institute—that is, probable cause at the time it instituted—the
 11 suit or action in which it seeks to forfeit the claimant’s property.
Id. (emphasis in original).

12 The government argues that this rationale is inapplicable because it has
 13 amended the complaint twice, and therefore it is as if the original complaint “never
 14 existed.” (Gov. Opp. at 8). The Ninth Circuit has previously addressed and
 15 rejected that exact argument:

16 Whether probable cause exists to institute proceedings is solely a
 17 question of what information is in the government’s possession; *even if*
 18 *the government were to amend its pleadings to include new evidence,*
 19 *the amendment could not change the historical fact that the*
 20 *government did not have probable cause at the time it brought the*
 21 *case. While a subsequent amendment might cure a violation of the*
 22 *pleading-with-particularity requirement in Supplemental Rule*
 23 *E(2)(a), it would stretch the concept of “relation back” too far to say*
 24 *that an amendment of pleadings can turn back time and make*
 25 *probable cause exist on a date when it did not.* Civil forfeiture
 26 proceedings are already rooted in one legal fiction; there is no
 27 justification for adding another more tenuous legal fiction to the mix.
Id. at 1068 (emphasis added).

28 In addition, the Ninth Circuit has twice held that this requirement survived
 the enactment of the Civil Asset Forfeiture Reform Act of 2000. See United States
v. \$493,850, 518 F.3d 1159, 1169 (9th Cir. 2008); United States v. \$186,416.00 in
U.S. Currency, 590 F.3d 942, 949 (9th Cir. 2010).

A. This Court Has Already Ruled, And The Government Has
Previously Admitted, That Probable Cause Is Measured As of the
Time The Government Filed The Initial Complaint

This Court has already ruled that “the Government must show that **at the**
time it filed the *initial* complaint, it had probable cause to ‘believe that the
 property is involved in the activity subject to the specific forfeiture statute it

1 invokes.’ . . . Claimant is correct that any after-acquired evidence may not be used
2 at trial to show that the Government had probable cause to institute the action.”
3 ECF Doc. No. 68-1 at 12 (emphasis added) (quoting \$493,850.00, 518 F.3d at
4 1169).

5 In opposing Claimants’ Motion to Dismiss the SAC, the government
6 acknowledged that probable cause is determined at the time it instituted the action,
7 but argued that probable cause was not a pleading issue, and urged the Court to deny
8 the motion and have Claimants’ raise the issue through a motion for summary
9 judgment. Sept. 6, 2012, Hr’g Tr. at 7:6-13, 24:16-28:13. The Court then denied
10 Claimant’s motion, but permitted discovery regarding the issue of probable cause.
11 That ruling set the stage for this motion for summary judgment. The government
12 now attempts to “flip the script,” arguing that the existence of the SAC renders the
13 original complaint non-existent, and, that probable cause must be measured as of the
14 filing of the SAC. (Gov. Opp. at 10). The government is judicially estopped from
15 making this argument.

16 **B. The Government Is Estopped From Changing Its Position**

17 Here, the government successfully advocated a position that resulted in the
18 denial of Claimant’s motion to dismiss. But now, the government reverses itself in
19 an attempt to defeat summary judgment. It argues that its prior position (which the
20 Court adopted) was wrong. In short, the government is “playing fast and loose
21 with the court[]” and, in the interest of the “orderly administration of justice and
22 regard for the dignity of judicial proceedings,” should be estopped. Hamilton v.
23 State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir. 2001) (“Judicial estoppel
24 is an equitable doctrine that precludes a party from gaining an advantage by
25 asserting one position, and then later seeking an advantage by taking a clearly
26 inconsistent position.”).

1 **C. The Government’s Contention That Probable Cause is Measured**
 2 **as of the SAC Is Illogical and Contrary to Law**

3 Even if the Court were to entertain the government’s newly minted position,
 4 the law in the Ninth Circuit is unequivocal: probable cause must be had when the
 5 government institutes the forfeiture proceeding and only the evidence it relied on at
 6 the time it instituted the action can be used to prove probable cause. \$191,910.00,
 7 16 F.3d at 1067; \$493,850.00, 518 F.3d at 1169; United States v. \$186,416.00 in
 8 U.S. Currency, 527 F. Supp. 2d 1103, 1115 (C.D. Cal. 2007) (government “could
 9 not make up for its lack of probable cause after the lawsuit began through the use of
 10 discovery, or other independent investigation”), *rev’d and remanded on other*
 11 *grounds*, 590 F.3d 942 (9th Cir. 2010) (probable cause “may be based only upon
 12 information gathered before the forfeiture action was instituted”).¹

13 The district court and Ninth Circuit decisions in \$186,416.00 in U.S.
 14 Currency are instructive. There, the government commenced forfeiture
 15 proceedings against the defendant currency after the execution of a search warrant
 16 at UMCC, a medical marijuana dispensary. The district court granted UMCC’s
 17 motion to suppress the currency on the grounds that there was no probable cause
 18 for the search warrant that led to the seizure. UMCC then filed a motion for
 19 judgment on the pleadings which the district court converted into a motion for
 20 summary judgment on the narrow question of whether the government had
 21 sufficient evidence to initiate the lawsuit against the defendant currency. Relying
 22 on \$191,910 in U.S. Currency, the district court compared the rules of pleading, as
 23 evaluated on a motion to dismiss, against the evidentiary showings, required on a
 24

25 ¹ Claimants do not concede the government has shown sufficient evidence at the
 26 time of the SAC to support probable cause. Claimants did not address probable
 27 cause as of the filing of the SAC because the inquiry under unequivocal Ninth
 28 Circuit law for when the government must *have* probable cause is at the time it
 instituted the forfeiture proceeding—i.e., when it filed its original complaint.

1 motion for summary judgment, and determined “[t]he Government’s pleading of
2 probable cause is not relevant to whether, on a motion for summary judgment, it
3 actually *had* probable cause to file the forfeiture action.” 527 F. Supp. 2d at 1121.
4 The court then concluded that a declaration by Scott Feil, the CEO of UMCC,
5 which was filed in support of a motion for return of property before the forfeiture
6 complaint was filed, could be used to support probable cause. In that declaration,
7 Feil acknowledged that the defendant currency was used in the course of marijuana
8 sales. The district court concluded that this declaration was not tainted by the prior
9 illegal search and by itself gave the government probable cause to begin the action.
10 Accordingly, the court denied claimant’s motion for summary judgment.

11 The Ninth Circuit reversed and remanded. The circuit held that the Feil
12 declaration was tainted by the illegal search and could not be used to support
13 probable cause. Nevertheless, the Ninth Circuit, like the district court, concluded
14 that probable cause may be based only upon information gathered before the
15 forfeiture action is instituted. \$186,416.00 in U.S. Currency, 590 F.3d at 949.

16 To hold otherwise would be to endorse the very conduct the court in \$191,910
17 in U.S. Currency warned against: permitting the government “to bring proceedings
18 (and thereby seize property) on the basis of mere suspicion or even enmity and then
19 engage in a fishing expedition to discover whether probable cause exists.” *Id.* at
20 1067-68.

21 The government acknowledges the Ninth Circuit’s holding in \$191,910 in
22 U.S. Currency, but argues that the filing of an amended complaint renders the
23 original complaint non-existent and its filing date irrelevant. (Opp. at 9). The
24 government cites Rhodes v. Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010), for the
25 general rule of pleading that “when a plaintiff files an amended complaint, the
26 amended complaint supersedes the original, the latter being treated thereafter as
27 non-existent.” *Id.* The government’s reliance on Rhodes is misplaced.

1 Rhodes is not a forfeiture case, but rather concerned the procedural
2 requirements of the Prison Litigation Reform Act of 1995 (“PLRA”). The PLRA
3 requires that a prisoner exhaust his administrative remedies before filing a complaint
4 which challenges his conditions. After filing his original complaint, Rhodes filed a
5 supplemental amended complaint under F.R.C.P. Rule 15(d) which alleged new acts
6 of retaliation that occurred after the filing of his original complaint. There was no
7 dispute that Rhodes had exhausted his administrative remedies as to these new
8 claims by the time he filed the amended complaint. However, because those claims
9 had newly arisen, he had not exhausted his administrative remedies as to those
10 claims when he filed his original complaint. As a result, the district court dismissed
11 the newly alleged claims because it believed that the PLRA’s exhaustion
12 requirement barred amended complaints from asserting new claims based on
13 conduct that occurred after the initial complaint was brought. The Ninth Circuit
14 reversed, noting that Rhodes’ assertion of claims based on events which occurred
15 after the filing of the original complaint was a supplemental pleading under Rule
16 15(d). The court added that the district court’s interpretation of the PLRA’s
17 exhaustion requirement necessarily implied that a supplemental complaint alleging
18 new, and newly-exhausted, claims could never be filed in a PLRA action. The court
19 concluded that Congress had not indicated that it intended to do away with Rule
20 15(d) and supplemental pleadings in PLRA actions. Accordingly, the court found
21 its decision necessary to harmonize the PLRA with the F.R.C.P. Id. at 1007.

22 Rhodes is inapposite and does not alter the Ninth Circuit’s holding in
23 \$191,910.00, that probable cause must exist at the time the government initiates the
24 forfeiture action and that the government cannot avoid that result by gamesmanship
25 and technical amendments. Id. at 1068. None of the other authority cited by the
26 government compel a different result.

27 In United States v. \$6,190.00 in U.S. Currency, the government amended its
28 complaint to add *additional* defendant assets. 581 F.3d 881, 883 (9th Cir. 2009).

1 However, the court in \$6,190.00 does *not* hold that the date of the amended
 2 complaint is the measuring stick for probable cause to institute forfeiture
 3 proceedings against the previously-named, existing defendant *res.* Therefore,
 4 nothing in the court's opinion in \$6,190.00 runs afoul of its rule in \$191,900.00.

5 The government's other authority fare no better. For example, in United
 6 States v. \$13,391.00, the court declined to consider evidence acquired after the
 7 government filed its original and amended complaints, which were filed one month
 8 apart. 2010 WL 1507980, at *5 (D. Haw. Apr. 14, 2010). The remainder of the
 9 government's cases, including pre-CAFRA and out-of-circuit district court
 10 opinions, consider motions to dismiss based on pleading inquiries. None of these
 11 cases, however, contradict the Ninth Circuit's rule that the government must *have*
 12 probable cause to institute the forfeiture proceeding, not merely plead probable
 13 cause.

14 **D. The Date The Government Filed Its Initial Complaint Instituting**
 15 **The Forfeiture Complaint Is Not Non-Existent**

16 The government argues that with filing of the SAC, the original complaint
 17 was rendered "non-existent" – "no more than a mere scrap of paper" – and should
 18 be treated "as if it never existed." (Opp. at 7-8.) The government completely
 19 ignores the existence of the relation-back doctrine. That doctrine is the perfect
 20 example of a well-established rule that demonstrates the original complaint is not
 21 dead for all purposes, even if superseded by a subsequent amendment. The
 22 doctrine provides that an amendment to a pleading relates back to the date of the
 23 original pleading for purposes of the statute of limitations when the amendment
 24 asserts a claim or defense that arose out of the conduct, transaction, or occurrence
 25 set out-or attempted to be set out-in the original pleading. Williams v. Boeing Co.,
 26 517 F.3d 1120, 1133 (9th Cir. 2008).

1 The government argues that the SAC should be treated as a new suit, thus
 2 conceding that the relation back doctrine is inapplicable in this instance. The
 3 government states:

4 Moreover, because the SAC contains new claims and new allegations
 5 that were not alleged in the original complaint—specifically, the SAC’s
 6 bank fraud claim and its fourth claim for forfeiture—it should for this
 reason, too, be deemed “in effect the commencement of a new suit.”
 (Opp. at 8).

7 Although the relation back doctrine may not be applicable to all amended pleadings,
 8 the existence of the doctrine belies any suggestion that an original complaint is
 9 automatically treated as if it never existed whenever an amended pleading is filed.
 10 More importantly, however, the government’s admission that the SAC should be
 11 treated as a new suit is a tacit admission that the government needed to try to secure
 12 additional evidence because the government’s original complaint (as well as its
 13 FAC) did not satisfy the probable cause requirement. This is the very conduct the
 14 Ninth Circuit’s rule sought to prevent. See \$191,910 in U.S. Currency, 16 F.3d at
 15 1067 (if the government were not required to *have* probable cause at the time it
 16 instituted the action, the government could “bring proceedings (and thereby seize
 17 property) on the basis of mere suspicion or even enmity and then engage in a fishing
 18 expedition to discover whether probable cause exists.”).

19 **II. THE GOVERNMENT’S PRE-COMPLAINT EVIDENCE FAILS TO**
 20 **SUPPORT PROBABLE CAUSE TO FORFEIT EACH OF THE**
 21 **DEFENDANT RES AT THE TIME IT INSTITUTED THE ACTION**

22 Of the 102 exhibits filed in support of the government’s opposition to the
 23 instant motion, 53 were acquired or otherwise reflect facts obtained after the
 24 government instituted this action and are therefore irrelevant for purposes of this
 25 motion. The remaining exhibits are devoid of any reliable evidence which support
 26 the government’s claims that Claimant engaged in any violation of E.G. law. As
 27 set forth below, the evidence in the government’s possession was little more than a
 28

1 collection of rumors of corruption from a variety of uncorroborated sources,
2 including organizations that the U.S. State Department deemed unreliable.

3 **A. The Government's Exhibits Do Not Show Probable Cause That**
4 **Claimant Violated E.G. Law**

5 **1. The Government Attempted To Conceal Exculpatory**
6 **Evidence From The State Department**

7 The government claims that “corruption is endemic in E.G.’s infrastructure
8 sector. . . .” (Gov’t Sep. Statement at 16) In support of this conclusion, the
9 government selectively quotes from a March 2011 State Department cable (Graf
10 Ex. 14), that corruption supposedly exists in its “murkier transactions such as
11 sweetheart deals, influence peddling, construction contracts and finder’s fees.”
12 (Gov’t Fact No. 74.) The government is not accurately quoting from the
13 document. The government deliberately omitted the final clause of this same
14 sentence: “*all of which are legal in Equatorial Guinea.*” (Graf Decl. Exh. 14).
15 Moreover, the State Department has also written, two years earlier, that “E.G. has
16 no law limiting or even defining conflict of interest.” (Graf Decl. Exh 15 at 585).

17 **2. The Government's Omission Of Evidence That Conduct Was**
18 **Legal Is An Old Trick, Condemned By The Ninth Circuit In**
19 **A Similar Situation**

20 The government claims it had probable cause based on generalized claims of
21 “corruption.” The government cannot sincerely contend that it had probable cause
22 to believe that Claimant’s assets were traceable to violations of E.G. law when it
23 had uncontroverted evidence that the alleged conduct and business relationships it
24 claimed were illegal, were in fact lawful. Indeed, the government’s failure to even
25 utilize ellipses to signal its willful omission of this exculpatory clause is telling.
26 The Ninth Circuit’s analogous analysis in \$186,416.00 is instructive. There, local
27 law enforcement authorities obtained a search warrant for UMCC. Even though
28 they were aware of evidence suggesting the clinic “may have been operating in

1 compliance with California law,” they omitted this evidence in their application for
 2 a search warrant based on violations of California state law. Both the district court
 3 and the Ninth Circuit concluded that the search was illegal. Indeed, the Ninth
 4 Circuit held that in omitting facts that suggested the clinic’s conduct “was probably
 5 legal under California law,” the agency “misled” the court into “perceiving [the
 6 clinic’s] conduct as criminal.” *Id.* at 952.

7 Similarly, here, the government seeks forfeiture of the defendant *res* based on
 8 violations of *E.G. law*, while simultaneously omitting facts that it was aware of that
 9 demonstrate that the accused conduct, even if true, is legal under E.G. law. Just as
 10 in \$186,416.00, this Court should reject the government’s misleading suggestion
 11 that the claimed conflicts of interest are illegal in E.G.

12 **3. Uncorroborated and Unreliable Magazine Articles Do Not** 13 **Provide Probable Cause**

14 Another large chunk of the government’s pre-filing “evidence” consists of
 15 magazine articles written by NGOs that claim that corruption is widespread
 16 throughout E.G. (*See, e.g.,* Graf Decl. Exhibits 13, 16 and 19). The government
 17 does not identify what effort, if any, it made to confirm that the sources of these
 18 articles are reliable or to otherwise corroborate their allegations. Rather, the
 19 government points out merely that it can rely on inadmissible hearsay for purposes
 20 of establishing probable cause. (Opp. at 6.) Once again, the government is not
 21 being candid. The cases it relies upon hold that hearsay may only form the basis
 22 for probable cause if that hearsay is *corroborated or otherwise shown to be*
 23 *reliable*. *See* Franks v. Delaware, 438 U.S. 154, 165 (1978) (hearsay evidence
 24 supporting probable cause must be shown to be “truthful” by reciting
 25 circumstances evidencing the reliability of the information and the credibility of
 26 the informant); United States v. One 56-Foot Yacht Named Tahuna, 702 F.2d
 27 1276, 1283-84 (9th Cir. 1983) (probable cause depends “upon the legal sufficiency
 28

1 and reliability of the evidence”). Conversely, unreliable or uncorroborated hearsay
2 cannot be used to support probable cause. See Mot. at 10-11.

3 Not only did the government fail to corroborate the sources of these articles,
4 but the evidence in the government’s possession at the time it initiated this action
5 actually cautioned against relying on these questionable sources. A State
6 Department cable dated March 21, 2011, admitted that the allegations against E.G.
7 in the international media and by NGOs “is extremely tendentious.” (Graf Decl.
8 Ex. 14, ECF No. 91-18, at DOJ_0000591). In another document, the State
9 Department admits that NGOs and other organizations:

10 may be working from a position of bias and with poor information. To
11 our knowledge, none of them have undertaken recent on-the-ground
12 surveys here. On the contrary, there are signs the perspective of the
13 problem in EG may not be in complete alignment with reality.
14 Moreover, assessments rarely take into account the country’s level of
15 societal and institutional development. . . . [W]e find local nuances and
16 ‘ground truth’ to be at odds with often-exaggerated claims made by the
17 international press and even by NGO’s.”
18 (Graf Decl. Ex. 15, ECF No. 91-19, at DOJ_0000584, -588-589).

19 The government does not dispute the State Department’s findings. Given,
20 the existence of these pre-filing concerns and the government’s complete failure to
21 show that anything in these articles were based on reliable sources, the government
22 cannot rely on these NGO articles to support probable cause. See, e.g., United
23 States v. Delgadillo-Velasquez, 856 F. 2d 1292, 1297-1298 (9th Cir. 1988) (no
24 probable cause where the government relied on an untested informant’s tip, which
25 it had not shown to be reliable and failed to adequately corroborate).

26 **4. Uncorroborated Information From Italian Officials Do Not** 27 **Establish Probable Cause**

28 The government relies on information from Italian officials to allege that
Claimant had a corrupt relationship with General Work, an Italian contractor.
(Manzanares Decl. ¶¶ 28-32). Yet, the Italian authorities did little more than
provide speculation and conjecture based on their own review of newspaper

1 articles and conversations with unidentified and uncorroborated sources. As
2 discussed above, uncorroborated sources cannot establish probable cause.

3 For example, Ex. 26 is an ROI which simply notes that in April 2009, the
4 government received a report from Italian authorities (the “GDF”) regarding a
5 network of bank accounts. Exhibit 26 states:

6 They[Italian authorities] believe these accounts are all owned or
7 controlled by the current ruler of the country and his son and are
8 allegedly funded with government revenues stolen by the dictator and
9 his son. The accounts appear to have markers of money laundering.

9 Other than stating that the Italian authorities were willing to share their information
10 with the government, the report contains no other information. Indeed, it does not
11 even identify the basis for the GDF’s concerns. Especially in the political arena,
12 those unhappy with the status quo may be motivated to publish strong, baseless
13 opinions. The government cannot use statements that may be nothing more than
14 opinion when facts are required. The government fails to state what, if any,
15 evidence the authorities had for this belief. Nor do they explain what “markers”
16 give an “appearance” of money laundering.

17 Exhibits 24 and 27 report meetings between the U.S. government and the
18 GDF on June 12, 2009. The government’s opposition describes this meeting as a
19 lengthy briefing which allegedly revealed that “Italy’s analysis of that evidence
20 concluded that 45% of GW’s construction revenue was diverted as kickback’s to
21 Nguema’s bank accounts in Switzerland, Luxembourg and Monaco.” (Opp. at 21).
22 Yet again, the government has misstated the evidence. The report of investigation
23 in fact reads: “GDF *speculates* that OBIANG received forty-five percent of all
24 general contracting projects which were preformed [*sic*] by GW. See Manzanares
25 Decl., Ex. 24 at DOJ_000317 (emphasis added).

26 The government does not identify the basis of the GDF’s speculation. This
27 too is another example of the government’s efforts to deceive. The power point
28

1 presentation provided to the government by the GDF reveals that the statement came
2 from an Italian newspaper article:

3 a former agent of the secret services of that African State, friend of
4 Celotti (who asked to be called “Santiago Ndong”) stated: “Celotti gave
5 a lot of money from the proceeds of public contracts to members of the
6 government, but he was also giving money to the opposition. The
7 president and his administration started to have suspicions about him.
8 Why is it that today the president’s family controls 45% of Guinea
9 General Works?”

10 (Manzanares Decl., Ex. 25A at DOJ_003857).

11 Rather than receiving information from “reliable law enforcement partners,” the
12 government is simply relying on the “speculation” of foreign law enforcement.
13 Worse still, that speculation was based on those officers’ review of foreign
14 newspaper articles which quoted a rhetorical question from an unknown and
15 uncorroborated witnesses. This is a far cry from the evidence the court found
16 reliable in In Re Sindona, 450 F. Supp. 672, 688 (S.D.N.Y. 1978). There, the court
17 upheld an extradition warrant from Italy after it concluded that the Italian
18 government’s evidence was based on “careful and thorough investigations” and
19 “amply corroborated” by deposition testimony. Id.

20 In contrast, here, the government concedes that it made no effort to
21 corroborate the GDF’s speculation regarding Claimant’s relationship with General
22 Work (or the newspaper article for that matter). Nevertheless, the government
23 claims that GDF’s claims are reliable based on allegations that Nguema
24 misappropriated funds on other occasions. (Opp. at 21). Even if allegations of
25 different conduct were sufficient to corroborate the GDF’s speculation, the
26 government does not provide evidence of any actual misappropriation. Rather, the
27 government refers only to its purported evidence that Claimant allegedly *attempted*
28 to misappropriate funds to acquire a Gulfstream aircraft. “[T]he problem remains
that the alleged misappropriation *did not in fact occur.*” Order, ECF No. 47 at 5
(emphasis in original). The government admits Claimant did not misappropriate any
public funds in this transaction and cites no authority demonstrating alleged

1 attempted conduct is adequate corroboration. Nor can this allegation even be fairly
2 considered an attempted misappropriation.

3 Contrary to the government's characterization, its witness did not tell the
4 government that Claimant attempted to misappropriate public funds to acquire the
5 aircraft. Instead, the ROI states that Gulfstream "was pressuring [Claimant] for
6 payment" of the first installment and that Claimant invited the witness to E.G. to
7 avoid further payment delay in Europe. After meeting with Claimant at a bank in
8 E.G., an authorization for the wire transfer was signed and the money successfully
9 transferred to Gulfstream without any alleged involvement of any American oil
10 company or any evidence of misappropriation of public funds. In fact, the report
11 states that the witness "concluded the transfer was a legitimate transaction and
12 nothing in the transaction [gave] him any cause for alarm." (Graf Ex. 5 at
13 DOJ_0000125). The witness reportedly told the investigator that before the
14 successful wire transfer, when he "was pressuring [Claimant] for the payment" (*id.*),
15 Claimant allegedly suggested a "back-up" proposal wherein "he could pay [one of
16 the American oil company that have a CFA account] and they in turn could pay
17 [Gulfstream]." (Graf Decl. Ex. 6B at DOJ_0000131). The witness stated that he
18 believed Claimant was merely "reacting to Gulfstream's pressure and was grasping
19 for a solution on the payment." No efforts were made to misappropriate funds, the
20 oil company was never contacted, and the payment proceeded through a
21 "transparent and legitimate process."² (Graf. Decl. Ex. 5 at DOJ_0000125-126).

22 In short, at the time the government initiated this action, it lacked any reliable
23 evidence that even a single company had been extorted by Claimant.

24
25 ² The government's other witness reported on what Claimant "apparently
26 mentioned" to this first witness and does not offer any first-hand account of the
27 proposal or any alleged attempt to misappropriate public funds. See ECF Doc. No.
28 91-6 at DOJ_0000116.

1 **5. None of the Government’s Other Alleged Evidence Supports**
 2 **Probable Cause To Institute The Forfeiture Proceeding**

3 The remaining “evidence” relied on by the government is either after-
 4 acquired, impermissibly stale, or otherwise insufficient to establish probable cause.

5 **Removal of Assets:** The government argues that the alleged removal of assets
 6 from the district *after the institution of the forfeiture proceeding* somehow
 7 supported probable cause *for the institution* of the same action. This is
 8 nonsensical. Because the government must have probable cause at the time it
 9 institutes the action, it cannot rely on alleged acts consummated after that time to
 10 retrospectively support probable cause.

11 **French Money Laundering Investigation:** The government argues that the
 12 existence of an investigation by French authorities and the resulting seizure of
 13 different properties somehow supports probable cause that the defendants *in rem* are
 14 subject to forfeiture under U.S. law. Not so. The seizure by French authorities
 15 occurred in September 2011 and in 2012 – **after the filing of the original**
 16 **complaint.** Thus, the evidence is irrelevant. Further, the government does not
 17 identify any of the evidence underlying the French investigation. The mere
 18 existence of the investigation without more does not support probable cause. This
 19 Court has already ruled that “[t]he burden is different in French court.” See Sept. 6,
 20 2012, Hr’g Tr. at 13:19-24.

21 **Tuition Payments:** The government alleges that in 1991, an American oil company
 22 paid Claimant’s tuition and expenses to attend school at Pepperdine. Even if this
 23 allegation bore some relationship to the defendant assets, the 20 years that elapsed
 24 before the government instituted the action renders this allegation stale. Information
 25 becomes stale when enough time has elapsed such that there is no longer a sufficient
 26 temporal basis to support probable cause. United States v. Grant, 682 F.3d 827, 835
 27 (9th Cir. 2012) (no probable cause on staleness grounds where nine-month gap
 28 between offense and warrant application failed to show “the property to be seized

1 was known to be at the place to be searched so recently as to justify the belief that
2 the property is still there at the time of the issuance of the search warrant.”).

3 **Alleged Inconsistent Explanations of Wealth:** The government contends that
4 Claimant has refused to describe the sources of his wealth and at other times has
5 provided inconsistent explanations as to the source of his wealth support. (Opp. at
6 24). The government again misstates the facts. Rather, on separate occasions,
7 Claimant denied that he engaged in corruption and that his business interests were
8 legitimate. A 2009 State Department cable reported that when probed about
9 corruption, Claimant explained that during the era of the “skinny cows,” he received
10 a timber concession. Similarly in 2011, Claimant complained to the U.S.
11 Ambassador that he was a victim of false accusations of kleptocracy by the media.
12 Claimant stated that he had never taken money from the oil companies and that the
13 government could confirm that fact. Claimant added that “his companies had
14 profited handsomely from winning government contracts in road building and
15 construction in the booming infrastructure business, but that no one wanted to hear
16 the truth. In neither instance was Claimant asked for an exhaustive list as to the
17 sources of his wealth.

18 **Possession of Cash:** The government cites no authority for the proposition that
19 Claimant’s alleged possession of large quantities of cash supports probable cause to
20 believe that he violated E.G. law. Instead, it cites cases which stand for the
21 proposition that large amounts of cash bundled in a manner consistent with *drug*
22 *trafficking* and accompanied by supporting evidence connecting the currency to
23 *drug trafficking* can support probable cause to seize that currency as involved in
24 *drug trafficking*. See, e.g., United States v. Padilla, 888 F.2d 642, 644 (9th Cir.
25 1989) (“We have said that in assessing probable cause an ‘extremely large amount
26 of money found in the household itself is strong evidence that the money was
27 furnished or intended to be furnished in return for drugs.’ The test requires more
28 than the mere existence of a large amount of cash to establish a connection between

1 that cash and illegal drug transactions; the money must be ‘in combination with
 2 other persuasive circumstantial evidence.’”). Given that the drug trade is a cash
 3 business, that inference, when combined with other evidence, is appropriate. On the
 4 other hand, the government has not identified a single act of foreign corruption that
 5 would suggest that any cash in Claimant’s possession was the proceeds of
 6 corruption.

7 **Real Estate Held in Name of LLC:** That Claimants took title to the defendant real
 8 property in the name of an LLC does not support probable cause that the real
 9 property constitutes the proceeds of foreign corruption. That presumption is
 10 defeated by the government’s admission that Claimant made offers on the property
 11 in his own name. See Sep. Statement at Claimant Fact A.15. The Court has already
 12 ruled that the fact he took title in the name of an LLC as part of the transaction is a
 13 “commonplace financial arrangement.” See ECF Doc. No. 47 at 6. The
 14 government also does not dispute that Claimant holds title to the defendant Ferrari
 15 in his own name as an individual. See Sep. Statement at Claimant Fact A.14.

16 **B. The Government Continues to Fail To Link Each Specific**
 17 **Defendant Res To Proceeds of Specified Unlawful Activity**

18 The Court instructed the government that “*as to each of the items* that the
 19 government seeks to forfeit,” the government must “list for [the Court] the bases of
 20 the probable cause, . . . which will make it clear as to what are the grounds for the
 21 government’s belief that the *item* was forfeitable.” Jan. 28, 2013, Hr’g Tr., at 22:13-
 22 20 (emphasis added). The government has refused to do this.

23 Indeed, this was not the first time the Court has asked the government to
 24 explain its basis to proceed against *these* specific assets as opposed to some other
 25 asset, but tellingly, the government has been unable to do so. And the reason is
 26 clear, the government has no basis to connect the specific *res* to any SUA.
 27 However, “the government is supposed to have that information as a basis for filing
 28 the forfeiture.” Sept. 6, 2012, Hr’g Tr. at 12:17-13:13. As the Court has explained,

1 eventually, if this case is going to go forward, there has to be that
 2 tracing. And even though you have come up with some theories which
 3 appear to be sufficient on their face for certain things, unless there is
 4 that tracing where under one of the four theories that the government is
 5 proceeding under, that you can trace the proceeds from one of these
 6 bases to the *specific* items that you're seeking to forfeit the glove, the
 7 Ferrari, the house. . . . If the government doesn't meet the burden, then
 8 we stop the case at this point in time, but we've litigated the case fully.
 9 Sept. 6, 2012, Hr'g Tr. at 12:20-13:13 (emphasis added).

10 Accordingly, because the government has failed to present evidence
 11 connecting, either directly or indirectly, unlawful SUA activity and the specific
 12 defendant *res* it seeks to forfeit, summary judgment is appropriate. See, e.g., United
 13 States v. U.S. Currency, \$30,060.00, 39 F.3d 1039, 1045 (9th Cir. 1994) (affirming
 14 summary judgment against the government); United States v. \$405,089.23 U.S.
 15 Currency, 122 F.3d 1285, 1292 (9th Cir. 1997) (reversing and holding the
 16 government "failed to demonstrate the requisite probable cause for the institution of
 17 its forfeiture proceeding because there is a gap in the evidence between the targeted
 18 assets and the illegal narcotics activity").

19 **C. The Government's Net Worth Theory Does Not Provide Probable**
 20 **Cause**

21 In the absence of reliable evidence regarding specific acts of corruption, the
 22 government relies heavily on the so-called "net worth theory." The government
 23 argues it could essentially forfeit any single item of Claimant's property based on its
 24 belief that Claimant's expenditures exceeded his government salary.

25 As a preliminary matter, this theory requires that Claimant's "net worth"
 26 derive from illegitimate sources. See, e.g., United States v. \$223,178.00 In Bank
 27 Account Funds, 2008 WL 4735884 (C.D. Cal. Apr. 30, 2008) (claimant unemployed
 28 with no significant income for the past six years based on pre-filing tax returns
 presented by the government); United States v. \$20,280.00 In U.S. Currency, 2011
 WL 4448735 (C.D. Cal. Sept. 13, 2011) (claimant was unemployed at the time and
 had never filed tax returns because his earnings were too low). Second, even if the

1 government can establish this element, it must still show some nexus between the
2 *res* and specified unlawful activity. See infra Section II.C.2.

3 **1. The Net Worth Theory Requires Proof That Claimant**
4 **Lacked Sufficient Income From Legitimate Sources**

5 The government argues that Claimant's wealth is derived in large part from
6 "corruption" stemming from improper government contracts and commodity
7 concessions. Yet, the government does not identify a single victim of corruption
8 and its claim that those relationships are illegal is contradicted by two separate
9 statements by the State Department. Accordingly, the government cannot establish
10 this prong of the net worth inquiry.

11 In a parallel forfeiture proceeding that the government is pursuing against
12 Claimant's aircraft in the District Court for the District of Columbia, the court
13 recently dismissed the government's complaint, observing that the government's
14 admission that "Nguema owns or controls a number of companies" defeated the
15 inference the government urges here. The court held that the government could
16 not support this inference because it did not know

17 what income Nguema derives from [his companies]. Thus without
18 knowing what Nguema's means are, the court is hard-pressed to infer
19 that he lives beyond them. Absent other details, the court cannot infer
20 how Nguema's wealth may have been derived, nor from what sources,
21 nor the legality of those sources. Although the government alleges that
22 Nguema lives far beyond his means, the court cannot leap to the
23 conclusion that his largesse is evidence of criminal activity.

24 One Gulfstream G-V Jet Aircraft, D.D.C. ECF No. 22 at 22.

25 The government has not presented any pre-filing evidence that supports
26 probable cause to believe that Claimant did not have substantial legitimate income
27 beyond his official salary. Instead, the government miscites the burden, arguing that
28 Claimant "presents no evidence" of his non-government salary income. (Opp. at
15.) That is not the law. Post-CAFRA, the government bears the burden to
establish each of the elements of its claims. 18 U.S.C. § 983(c)(1). Indeed, each of
the cases cited by the government where the court considered claimant's failure to

1 rebut the net worth evidence with counter evidence of legitimate source income, was
 2 either decided pre-CAFRA, or in the context of a government motion for summary
 3 judgment and claimant's failure to raise a genuine dispute of material fact following
 4 the government's proof of illegality by a preponderance of the evidence.

5 As a result, the court in the parallel D.C. proceeding recognized that it is the
 6 government's burden to prove the defendant assets are derived from or proceeds of
 7 the alleged specified unlawful activity; a burden the government did not meet to
 8 support probable cause for forfeiture: "Absent some specific indication that the Jet
 9 is derived from or traceable to illicit activity, the complaint must be dismissed."

10 Id. at 23.

11 2. The Net Worth Doctrine Requires a Link Between The Res 12 and The Specified Unlawful Activity

13 Even if the government had some evidence which suggested that Claimant
 14 had significant illegitimate income, that fact standing alone would not support
 15 application of the net worth theory. In each instance where this theory supported
 16 probable cause for the government's case, the court also relied on evidence
 17 connecting the *res* with the alleged conduct constituting specified unlawful activity
 18 giving rise to forfeiture. See, e.g., United States v. \$223,178.00 In Bank Account
 19 Funds, 2008 WL 4735884 (C.D. Cal. Apr. 30, 2008) (claimant admitted
 20 participation in the scheme for payment, and the government presented independent
 21 evidence of participation in the scheme and receipt of illegal funds in excess of
 22 amount seized); United States v. \$20,280.00 In U.S. Currency, 2011 WL 4448735
 23 (C.D. Cal. Sept. 13, 2011) (for connection to drug trafficking, the court also
 24 considered a positive alert by a narcotics canine, the packaging and location of the
 25 property consistent with drug activity, and claimant's criminal record); United
 26 States v. Thomas, 913 F.2d 1111 (4th Cir. 1990) (claimant thrice convicted on drug
 27 charges, testimony of an undercover agent who bought drugs at claimant's place of
 28 business implicating claimant in the transactions, discovery of drug-packaging

1 materials, and corroborated informants who bought drugs from the claimant);
 2 United States v. 3714 Cancun Loop, 2002 WL 1035457 (May 17, 2002) (claimant
 3 admitted he was a drug dealer and used drug proceeds to purchase materials used to
 4 build the house on the defendant real property).

5 This requirement is well-founded and demonstrably necessary in light of the
 6 nature of an *in rem* proceeding. In an *in rem* proceeding, “[i]t is the property
 7 which is proceeded against, and, by resort to a legal fiction, held guilty and
 8 condemned as though it were conscious instead of inanimate and insentient.”
 9 Various Items of Personal Property v. United States, 282 U.S. 577, 581 (1931).
 10 The government’s supposed basis would disregard any alleged guilt of the item
 11 and focus *exclusively* on the alleged disparity between the level of the claimant’s
 12 spending and what it contends is his only legitimate income (although in reality
 13 merely a subset of it) without any demonstration that the defendant – the thing – is
 14 guilty. Essentially, the government wants to rely on *in personam* forfeiture against
 15 Claimant irrespective of the guilt of the thing it has filed against. This is not a
 16 criminal forfeiture case, however, and Claimants have not been convicted of a
 17 crime giving rise to forfeiture. Accordingly, the government must make its case
 18 that the defendant *res* is guilty, not the person. Various Items of Personal Property
 19 v. United States, 282 U.S. 577, 581 (1931); *c.f.* Fed. R. Crim. P. 4(a) (arrest
 20 warrant requires “probable cause to believe that an offense has been committed
 21 and that the defendant committed it”).

22 **D. The Government’s Belated Bank Fraud Theory Is Irrelevant To**
 23 **The Issue Of Probable Cause When The Action Was Instituted**

24 Contrary to the government’s contention, Claimant moved for summary
 25 judgment and challenged the government’s bank fraud allegations as a basis for
 26 probable cause to institute the forfeiture proceeding in its moving papers (Mot at 1
 27 and 12 n.9.), and separate statement (Sep. St. at Fact Nos. A.20, B.6, C.6.).

1 The government contends it had probable cause to institute forfeiture
 2 proceedings because of the Claimant's alleged bank fraud. The fatal flaw in that
 3 argument is that the government did not plead bank fraud when it instituted this
 4 action. The government must have probable cause to believe that the property is
 5 involved in the activity subject to the specific forfeiture statute it invokes.
 6 \$191,910.00, 16 F.3d at 1071. The government did not plead bank fraud as a basis
 7 for forfeiture of any of the defendant assets in the original complaint. Rather, the
 8 sole basis for the government's forfeiture claims was that the defendant assets were
 9 the proceeds of specified unlawful activity of "foreign offenses." Complaint, ECF
 10 Doc. No. 1, at 6-7; Opp., ECF Doc. No. 44, at 1-2, 8-9, 11, 14.

11 Logically, when the government did not plead any bank fraud related theory,
 12 the government could not have been relying on a bank fraud theory when it
 13 instituted this action. Furthermore, even the FAC did not allege a bank fraud theory.
 14 If there could be any doubt as to the government's basis in seeking forfeiture, it was
 15 eliminated when, in opposing Claimant's Motion to Dismiss the FAC, the
 16 government conceded that it relied on "three distinct claims for forfeiture," and that
 17 each of these bases depended on the specified unlawful activity of "offenses against
 18 a foreign nation." Opp., ECF Doc. No. 44, at 1-2, 8-9, 11, 14. Even as to the basis
 19 that defendant *res* were "involved in" a money laundering transaction involving
 20 proceeds of a SUA, the only SUA it relied on were likewise offenses against a
 21 foreign nation constituting extortion and the misappropriation, theft or
 22 embezzlement of public funds. *Id.* at 2, 8. Indeed, the Court too recognized that "in
 23 order for the Government to prevail on any of their three stated bases for forfeiture
 24 of the Defendant Assets, it must show that Nguema amassed a wealth in a manner
 25 illegal under E.G. law. . . ." Order Dismissing FAC, ECF No. 47, at 3.³

26
 27 ³ Claimant maintain the government's bank fraud theory fails as a matter of law.
 28

1 The government's assertion that the SAC should be treated as a new suit is a
2 tacit concession that the government had not relied on a bank fraud theory as a
3 basis for forfeiture. If probable cause to institute an action is to have any meaning,
4 it must mean just that; probable cause for the claims instituted. The proposition
5 advanced by the government renders the statute meaningless.

6 The Supplemental Rule's requirement that the government verify its
7 forfeiture complaint, which allows it to immediately obtain a warrant, further
8 assures that the government must support probable cause as of the time it files this
9 verified, instituting complaint. See \$191,910.00, 16 F.3d at 1068 ("Because the
10 government must swear that probable cause exists at the time it institutes the
11 action, and that specific facts exist to support probable cause, it is entirely
12 reasonable to conclude that probable cause must actually exist when the
13 government brings forfeiture proceedings."); cf. United States v. Anderson, 453
14 F.2d 174, 175-176 (9th Cir. 1971) (holding bases for probable cause "must be
15 contained within the four corners of a written affidavit given under oath;" other
16 information, even which the government knew prior in time, was "irrelevant to a
17 determination of probable cause" where it was omitted from the sworn affidavit).

18 The government was required to swear it had probable cause under the crime
19 it specified. On that basis alone, it instituted suit. It turns out, it did not have
20 probable cause at all. But according to the government, that does not matter. It
21 had, the government argues, undisclosed evidence of an undisclosed crime, and
22 those secrets substituted for compliance with the statute. The government's
23 argument reduces to the modern legal equivalent of "shoot first, ask questions
24 later" – "sue first, provide probable cause later."

25 **Conclusion**

26 For the foregoing reasons, the Court should grant Claimants' motion, enter
27 judgment in favor of Claimants and order the immediate return of the defendant
28 assets.

1 DATED: June 7, 2013

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

2
3
4 By /s/ Duane R. Lyons

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